

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Complaint of Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of Sections 366.03, 366.06(2) and 366.07, Florida Statutes, with respect to rates offered under Commercial/Industrial Service Rider tariff; petition to examine and inspect confidential information; and request for expedited relief.

Docket No. 000061-EI

Filed: January 5, 2001

RECORDS AND REPORTING

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AGREEMENT TO MEDIATE

This Agreement to Mediate ("Agreement") is entered into by and between Petitioners, Allied Universal Corporation ("Allied"), and Allied's affiliate Chemical Formulators, Inc. ("CFI"), collectively referred to hereinafter as "Allied/CFI"; Respondent, Tampa Electric Company ("Tampa Electric"); and Intervenors, Odyssey Manufacturing Company ("Odyssey") and Sentry Industries, Inc. ("Sentry")(hereinafter Allied/CFI, Tampa Electric, Odyssey and Sentry are referred to collectively as "the parties"), by and through the parties' undersigned counsel; and Richard D. Melson, Esquire, hereinafter referred to as "the mediator."

WHEREAS, mediation is defined in relevant part in Section 44.011, Florida Statutes, as follows:

"Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

And,

WHEREAS, the parties seek to mediate the five issues stated in the Draft Prehearing Order issued in connection with the Prehearing Conference held on July 6, 2000 in this

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proceeding, a copy of which Draft Prehearing Order is attached as Exhibit A to this Agreement;
and

WHEREAS, the parties have agreed to compensate Mr. Melson for his services as a mediator at his quoted hourly rate of \$275 per hour for his time reasonably spent in review of certain materials to be provided to him by the parties in preparation for the mediation, and for his time reasonably spent at the mediation scheduled below; and

WHEREAS, the parties have agreed to divide responsibility for payment of the mediator's compensation in three equal shares to be paid one-third by Allied/CFI, one-third by Tampa Electric, and one-third by Odyssey and Sentry, all shares to be paid promptly upon presentation to the parties of the mediator's statement for his services; and

WHEREAS, to effectively mediate the issues stated in Exhibit A to this Agreement, the mediator requires access to information involving the requests of Sentry and Odyssey, and of Allied/CFI, for electric service under Tampa Electric's Commercial/Industrial Service Rider tariff; and

WHEREAS, much of the information required by the mediator has been identified as confidential information pursuant to Section 366.07, Florida Statutes, in several orders issued in this proceeding; and

WHEREAS, solely for the purpose of the mediation, the parties agree to disclose to the mediator, and the mediator agrees to consider, information which has been identified as confidential information in this proceeding;

NOW THEREFORE it is agreed as follows:

1. The mediation shall be conducted on Monday, January 8, 2001, beginning at

11:00 a.m., at the offices of the mediator, Hopping Green Sams & Smith, P.A., 123 South Calhoun Street, Tallahassee.

2. The mediator shall be compensated for his services on the terms stated above.

3. The mediator and each party involved in the mediation, namely Allied, CFI, Tampa Electric, Odyssey and Sentry, shall have a privilege to refuse to disclose, and to prevent any person from disclosing, communications made during the mediation, whether or not such communications involve information identified as Confidential Information.

4. All oral or written communications made during the mediation, other than an executed settlement agreement, shall be inadmissible as evidence in this proceeding and in any subsequent legal proceeding, unless all of the parties agree otherwise. The above notwithstanding, the parties shall be free to assert all arguments and facts relevant to the matters at issue in this proceeding whether or not these arguments or facts are raised or discussed during the mediation.

5. For purposes of this Agreement to Mediate, Confidential Information shall consist of all information heretofore or hereafter determined by the Florida Public Service Commission ("FPSC") to be entitled to confidential treatment in Docket No. 000061-EI. The mediator shall not disclose Confidential Information to any individual who has not executed the non-disclosure agreement approved for use by the FPSC in the above-mentioned Docket or otherwise publicly disclose such Confidential Information. The parties represent to the mediator that each person who attends the mediation, including any representative of FPSC staff, is a person to whom disclosure of Confidential Information is authorized in this proceeding.

6. No information which has been identified as Confidential Information in this

proceeding shall be disclosed to the mediator until he has signed this Agreement and the Acknowledgment of Protective Agreement attached as Exhibit B to this Agreement.

7. All documents containing information which has been identified as Confidential Information in this proceeding and which are to be provided to the mediator by any party: (1) shall be delivered to the mediator in envelopes marked "Confidential Information;" and (2) shall be returned by the mediator at the conclusion of the mediation on January 8, 2001, to the party which provided the documents. No copies of documents containing Confidential Information or notes of such Confidential Information may be made by the mediator.

8. The mediator shall not use any Confidential Information disclosed to him pursuant to this Agreement for any purpose other than for the purpose of the mediation. The mediator shall not represent any existing or potential Tampa Electric customer in any negotiations with Tampa Electric for a Contract Service Agreement under Tampa Electric's Commercial/Industrial Service Rider tariff or for a negotiated rate for electric service, for a period of three years commencing with the date of the mediator's execution of this Agreement.

9. This Agreement shall be binding on the parties to this Agreement from the date of its filing with the Commission. Each executed copy of this Agreement shall be deemed an original.

IN WITNESS WHEREOF, the parties and the mediator hereby execute this Agreement.

John R. Ellis

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Dated: 1/5/01

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Dated: 1/5/01

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Attorney for ODYSSEY MANUFACTURING COMPANY
and SENTRY INDUSTRIES, INC.

Dated: 1/5/01

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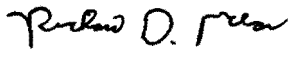
Dated: 1/4/01

Exhibit "B"

Acknowledgment of Protective Agreement

The undersigned hereby certifies that prior to the disclosure to him of certain information and documents belonging to, or in the possession of, or made available through the offices of Allied/CFI, Tampa Electric, Odyssey or Sentry, which are considered by Allied/CFI, Tampa Electric, Odyssey or Sentry, or by the owner of such information or documents, to be a trade secret, or otherwise of a privileged or confidential nature, he has read the Protective Agreement between Allied Universal Corporation and Chemical Formulators, Inc., Tampa Electric Company and Odyssey Manufacturing Company in Docket No. 000061-EI.

Executed this 4 day of January, 2001.

By: 
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